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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 GREYSTONE HOUSING
14 FOUNDATION, INC., a California
15 Non-Profit 501(c)(3) Corporation,
16

17 Plaintiff

18 v.

19 FANTASY HOLDINGS, LLC, an
20 Arizona limited liability company;
21 NARONGYOS SANTADSIN, an
22 individual,
23

24 Defendants
25
26
27

Case No. 3:16-cv-00300-AJB-DHB

Assigned to: Hon. Anthony J.
Battaglia

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF THEIR SECOND
MOTION TO DISMISS FOR:**

**(A) LACK OF PERSONAL
JURISDICTION;**

(B) IMPROPER VENUE; AND

**(C) INSUFFICIENT SERVICE
OF PROCESS**

AND

**ALTERNATIVE MOTION TO
TRANSFER VENUE**

**Hearing Date: March 9, 2017 at
2:00 p.m. in Courtroom 3B – 3rd
Floor**

Complaint Filed: February 5, 2016

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Defendants FANTASY HOLDINGS, LLC, an Arizona limited liability company (“**Fantasy Holdings**”), and NARONGYOS SANTADSIN, an individual (“**Santadsin**”) respectfully submit this Memorandum in support of their Second Motion to Dismiss pursuant to *Fed. R. Civ. P. 12(b)(2), 12(b)(3) and 12(b)(5)* for: (a) lack of personal jurisdiction; (b) improper venue; and (c) insufficient service of process. Alternatively, Defendants respectfully request for the Court to transfer the case to the United States District Court for the District of Arizona under *28 U.S.C. § 1406(a)* (cure defective venue) or *28 U.S.C. § 1404(a)* (*forum non-conveniens*).

On March 10, 2016, Defendants previously filed its original Motion to Dismiss for Improper Venue and Lack of Personal Jurisdiction and Alternative Motion to Transfer Venue [DE #5] (the “**Original Motion to Dismiss**”). On May 20, 2016, this Court specifically found that it had no personal jurisdiction over any Defendant, and dismissed the case [DE #15] (the “**Original Dismissal Order**”). Plaintiff has now filed an Amended Complaint in the exact same court naming the exact same Defendants to re-litigate the merits of personal jurisdiction and proper venue.

I. STATEMENT OF RELEVANT FACTS

Plaintiff Greystone Housing Foundation is a non-profit corporation formed in the State of California. *See Amended Complaint* at ¶ 1. Fantasy Holdings is a limited liability company formed in Arizona with its only place of business in Phoenix, Arizona. *See Amended Complaint* at ¶ 2; *Declaration of Narongyos Santadsin*, a copy of which is attached hereto as Exhibit “1” (the “**Santadsin Declaration**”), at ¶ 4. Santadsin is an individual member and manager of Fantasy Holdings and is domiciled in the City of Phoenix, State of Arizona. *See Amended Complaint* at ¶ 3; *Santadsin Declaration* at ¶¶ 2 – 3.

On or about July 30, 2009, Santadsin signed a promissory note in Phoenix, Arizona on behalf of Fantasy Holdings (as its manager), a copy of which is attached as an exhibit

1 to the Amended Complaint (the “**Note**”). The Note involves a \$500,000 payment made
 2 to Fantasy Holdings. *Santadsin Declaration* at ¶ 6. The terms and conditions of this Note
 3 were negotiated in the State of Arizona between Santadsin, Taylor Coleman, who is
 4 Santadsin’s domestic partner and closely works with and assists Santadsin with the day-
 5 to-day operations of his businesses, and Kent and Jade Casady. *Santadsin Declaration* at
 6 ¶ 11; *Declaration of Taylor Coleman*, a copy of which is attached hereto as Exhibit “2”
 7 (the “**Coleman Declaration**”), at ¶¶ 3, 9.

8 Although Plaintiff is shown as the promisee on the Note, it never has had any
 9 contacts or other relationship whatsoever to Defendants in connection with this
 10 transaction or otherwise. *Santadsin Declaration* at ¶ 10; *Coleman Declaration* at ¶ 8.
 11 The parties who funded the Note proceeds are Mr. and Mrs. Casady. *Santadsin*
 12 *Declaration* at ¶ 7; *Coleman Declaration* at ¶ 5.

13 Mr. Casady was a former friend of Mr. Coleman and first contacted him back in
 14 2008 to inquire about purchasing real estate that Mr. Coleman’s former company owned
 15 and which was in bankruptcy at the time. *Coleman Declaration* at ¶ 7. As part of that
 16 friendship, Mr. Casady learned and inquired about the businesses Mr. Coleman and
 17 Santadsin were engaged in. *Id.* In fact, Mr. Casady expressed to Mr. Coleman a desire
 18 to recruit third-party investors Mr. Casady knew to invest monies in such businesses. *Id.*
 19 During 2008 and 2009, Mr. Casady also provided legal advice and services to Santadsin
 20 and Fantasy Holdings, including the formation and structure of Fantasy Holdings and
 21 devising a joint venture agreement for Fantasy Holdings involving himself, Santadsin,
 22 Ms. Casady and Mr. Coleman. *Id.*; *Santadsin Declaration* at ¶ 9. Mr. Casady also
 23 provided legal representation to Mr. Coleman to prevent Mr. Coleman’s former residence
 24 from being repossessed via foreclosure, which proved to be unsuccessful. *Coleman*
 25 *Declaration* at ¶ 7.

26 In lieu of Mr. and Mrs. Casady directly funding the loan themselves to Fantasy
 27 Holdings, they insisted that they donate shares of personal stock to Plaintiff. *Santadsin*

1 *Declaration* at ¶ 7; *Coleman Declaration* at ¶ 5. Mr. and Mrs. Casady directed Plaintiff
 2 to: (a) sell the donated shares for approximately \$554,000; (b) return \$49,000 to Mr.
 3 Casady; and (c) lend \$500,000 directly to Fantasy Holdings. *Id.* Defendants had
 4 absolutely nothing to do with this structure, and it was solely Mr. Casady's idea. *Id.* In
 5 a nutshell, Mr. and Mrs. Casady insisted on using Plaintiff as a "funneling company" at
 6 the last minute to fund their own loan proceeds to Fantasy Holdings to obtain some type
 7 of tax savings or advantage.

8 Nothing in the Note mandates any venue or jurisdiction in California or even
 9 suggests which state's law applies. Although the Note does include California addresses
 10 to send payment to, nothing in the Note identifies the Plaintiff as a California corporation
 11 or resident. There were no discussions between Defendants and any other individuals
 12 that any dispute regarding the Note would be subject to California law or a California
 13 court. *Santadsin Declaration* at ¶¶ 15 – 16, *Coleman Declaration* at ¶¶ 14 – 15.
 14 Defendants neither conduct any business in California nor reside in California. *Santadsin*
 15 *Declaration* at ¶¶ 2, 5; *Coleman Declaration* at ¶ 11. Neither Defendants nor anyone
 16 acting on behalf of either Defendant had any contact with any of Plaintiff's employees,
 17 agents, officers or directors prior to the execution of the Note. *Santadsin Declaration* at
 18 ¶ 12; *Coleman Declaration* at ¶ 8. All of the terms and conditions set forth in the Note
 19 were negotiated in Arizona, via telephone and via electronic mail between Defendants,
 20 Mr. Coleman and Mr. and Mrs. Casady. *See Santadsin Declaration* at ¶¶ 10 – 11;
 21 *Coleman Declaration* at ¶¶ 8 – 9. In fact, Defendants have never even made a payment
 22 to Plaintiff, as all payments before the Note's maturity date were paid directly to Mr.
 23 Casady. *See Note*; *Santadsin Declaration* at ¶ 14; *Coleman Declaration* at ¶ 13.

II. LEGAL ARGUMENT

A. The Amended Complaint should be dismissed under *Fed. R. Civ. P. 12(b)(2)* because this Court does not have general jurisdiction over Defendants.

General jurisdiction allows a court to decide cases unrelated to the forum state if the defendant's contacts are "substantial enough to approximate physical presence in the forum state." See *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). For a court to have general jurisdiction over an individual, such individual must either be (a) served with process while he or she is in the forum, (b) domiciled in the forum, or (c) consent to the court's jurisdiction. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880–81 (2011). For a court to have general jurisdiction over an entity, the place of an entity's formation and principal place of business are usually the basis for general jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760, 187 L.Ed.2d 624 (2014). Outside of these rules, only "in an exceptional case" should a court find a corporation's operations in the forum to be "so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n.19.

In this case, there is no general jurisdiction in California with respect to either Defendant. Santadsin is an individual domiciled in Arizona and has no place of residence in California. *Santadsin Declaration* at ¶ 2. Santadsin was never served the original complaint, the Amended Complaint, or any other pleading in California. *Santadsin Declaration* at ¶ 17. Santadsin has never consented to jurisdiction in California. *Santadsin Declaration* at ¶ 15. Likewise, Fantasy Holdings is formed in Arizona, not California. *Santadsin Declaration* at ¶ 4; *Amended Complaint* at ¶ 2.

As such, to establish that California has general jurisdiction over both Defendants, Plaintiff is required to show that Defendants' operations in California are "so substantial and of such a nature as to render the corporation at home in that State." Plaintiff failed to do that in connection with the Original Motion to Dismiss.

1 As part of Plaintiff's attempt to re-litigate and get another "bite at the apple" on
 2 this issue, Plaintiff now includes unfounded allegations in paragraph 9 of the Amended
 3 Complaint:

4 (i) defendants solicited and engaged in commercial activities creating a
 5 latticework of contacts in and with the State of California with California
 6 residents in various of its counties, including San Diego County; (ii) Arizona
 defendants have purposefully directed their activities to California"

7 Defendants have no connection with the State of California other than the fact Greystone
 8 is the promisee listed on the Note and is a California non-profit (although this is not
 9 indicated on the Note) with a Lakeside, California mailing address. Neither Santadsin
 10 nor Fantasy Holdings operate or do any business in California. *Santadsin Declaration* at
 11 ¶ 5; *Coleman Declaration* at ¶ 11. There simply is no general personal jurisdiction in
 12 California with respect to either Defendant.

13 **B. The Amended Complaint should be dismissed under *Fed. R. Civ. P. 12(b)(2)***
 14 **because this Court does not have specific jurisdiction over Defendants.**

15 Likewise, California has no specific jurisdiction over either Defendant. Specific
 16 jurisdiction exists when a defendant has sufficient contacts with the forum state with
 17 respect to the specific underlying controversy. In the Ninth Circuit, specific jurisdiction
 18 exists in breach of contract actions only if: (1) the out-of-state defendant purposefully
 19 availed itself¹ of the privilege of conducting activities in the forum, thereby invoking the
 20 benefits and protections of the forum's laws; (2) the cause of action arose out of the
 21 defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable.
 22 *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1072 (9th Cir. 2001). It is the plaintiff, not
 23
 24

25 ¹ In determining the first prong for suits involving *intentional torts*, courts usually apply
 26 the concept of whether the Defendant engaged in conduct that constitutes "purposeful
 27 direction". Because this case involves causes of action based on breach of contract, only
 analysis of the "purposeful availment" test is relevant.

1 the defendant, that bears the burden of proof to satisfying prongs (1) and (2).
 2 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

3 To show that an out-of-state defendant purposefully availed itself of the privilege
 4 of conducting activities in the forum state for a breach of contract claim, a court must
 5 look at four (4) factors: (a) prior negotiations; (b) contemplated future consequences; (c)
 6 the terms of the contract; and (d) the parties' actual course of dealing. *Burger King Corp.*
 7 *v. Rudzewicz*, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185, 85 L.Ed.2d 528 (1985). A party
 8 to a lawsuit does not purposefully avail itself of a forum by merely entering into a contract
 9 with a forum resident. *Id.* at 478, 2185.

10 1. Prior negotiations and course of parties' dealings.

11 Paragraph 9 of the Amended Complaint further states as follows:

12 (iii) defendants' premeditated and purposeful solicitation of loan funds from
 13 a California resident and the execution of the Promissory Note understandably
 14 gave rise to ongoing obligations that connected and intertwined these Arizona
 15 defendants with the forum state; (iv) substantially all of the events giving rise
 16 to plaintiff GREYSTONE's claims under the Promissory Note were the result
 17 of the defendants' intentionally targeted solicitations to California residents
 18 in the origination and ultimate funding of the loan, resulting from defendants'
 19 purposeful availment and contact with plaintiff GREYSTONE, its officers,
 20 consultants and agents in the County of San Diego, State of California to
 21 secure and obtain the loan (v) defendants' various activities, including
 22 their active solicitation of the "life blood" funding of their company from
 23 California-based lender GREYSTONE, have created a "substantial
 24 connection" to the State of California

21 Defendants never had any prior negotiations, course of dealings or otherwise
 22 communicated with Plaintiff or any its agents at any time whatsoever prior to the Note
 23 being entered. *Santadsin Declaration* at ¶ 10; *Coleman Declaration* at ¶ 8. It is true that
 24 Defendants engaged in negotiations and dealings with Mr. and Mrs. Casady, ***who are not***
 25 ***parties to this lawsuit. However, all negotiations between Mr. and Mrs. Casady,***
 26 ***Defendants, and Mr. Coleman occurred either in person in Phoenix, Arizona or via***
 27 ***telephone or electronic mail communications with each other. Santadsin Declaration***

1 at ¶¶ 10 – 11; *Coleman Declaration* at ¶ 8 – 9; see *Peterson v. Kennedy*, 771 F.2d 1244,
 2 1262 (9th Cir. 1985) (concluding that the use of mail, telephone or other types of
 3 communications do not constitute evidence that a defendant purposely availed itself to
 4 the privilege of conducting activities in the forum state). Santadsin also executed the
 5 Note in Arizona, not California. *Santadsin Declaration* at ¶ 12; *Coleman Declaration* at
 6 ¶ 10; See *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 816 (9th Cir. 1988) (finding
 7 that no jurisdiction over the defendant, even though the contract was signed in the forum
 8 state, but was *negotiated* somewhere else and executed via mail). At no time did
 9 Santadsin, Mr. Coleman or any other party representing Defendants travel to California
 10 for the purpose of signing the Note, or negotiating any term of this transaction. *Id.*

11 In fact, as Mr. Casady claims in his own Declaration filed in support of Plaintiff’s
 12 Motion for Relief Setting Aside Court’s Order Dismissing Case [DE #22-1] (the
 13 “**Original Casady Declaration**”), he “met Taylor Coleman who is the prime mover
 14 behind FANTASY HOLDINGS, LLC, and its various subsidiaries sometime in 2008
 15 when I was looking for real estate investment opportunities in Arizona.” *Original Casady*
 16 *Declaration* at ¶ 2(a). Mr. Casady initiated contact with Mr. Coleman back in 2008 when
 17 Mr. Casady was interested in purchasing property that Mr. Coleman’s former company
 18 owned and which was in bankruptcy at the time. *Coleman Declaration* at ¶ 7. They
 19 became friends, and Mr. Casady learned and inquired about the businesses Mr. Coleman
 20 and Santadsin were engaged in. *Id.* In fact, Mr. Casady expressed to Mr. Coleman a
 21 desire to recruit third-party investors he knew to invest monies in such businesses. *Id.*
 22 Mr. and Mrs. Casady personally negotiated that they become part owners of Fantasy
 23 Holdings as consideration for the \$500,000, wherein (a) Mr. Casady would be its
 24 corporate legal counsel; (b) Ms. Casady would be its Chinese Liaison and consultant; (c)
 25 Mr. and Mrs. Casady would be Board members; and (d) Mr. and Mrs. Casady would both
 26 have voting rights for Fantasy Holdings. See *Fantasy Holdings LLC Term Sheet* attached
 27 as Exhibit “3” at p. 2 (the “**Term Sheet**”); *Santadsin Declaration* at ¶ 8; *Coleman*

1 *Declaration* at ¶ 6. Mr. Casady also represented Mr. Coleman as his lawyer in an
 2 unsuccessful attempt to save Mr. Coleman's Arizona home from foreclosure. *Coleman*
 3 *Declaration* at ¶ 7.

4 The Term Sheet went through ten (10) drafts between Mr. and Mrs. Casady and
 5 Defendants. *Santadsin Declaration* at ¶ 8; *Coleman Declaration* at ¶ 6. As a condition
 6 to providing \$500,000 to Fantasy Holdings, Mr. and Mrs. Casady personally negotiated
 7 that they become part owners and voting members of Fantasy Holdings. *Id.* Shortly
 8 before the Note was executed, and in lieu of directly funding the loan themselves to
 9 Fantasy Holdings, Mr. Casady decided to donate shares of stock to Greystone and
 10 Greystone would: (a) sell the shares for approximately \$554,000; (b) return \$49,000 to
 11 Kent Casady; and (c) lend \$500,000 directly to Fantasy Holdings. *Santadsin Declaration*
 12 at ¶ 7; *Coleman Declaration* at ¶ 5. ***It was Mr. Casady, not Defendants, that insisted***
 13 ***that Plaintiff be made a party to the Note so he could take advantage of the tax savings.***²
 14 *Id.*

15 Paragraph 9 of the Amended Complaint then attempts to show the course of parties'
 16 dealings by making reference to where payments were to be sent:

17 (v) per Arizona defendants' voluntary agreement, all monthly payments made
 18 under the terms of the Note over a period of forty-eight (48) months were

19 ² Plaintiff claims that Greystone is a 501(c)(3) non-profit foundation that is dedicated to
 20 providing affordable and low-income housing. *See Affidavit of James Holmberg* filed as
 21 an exhibit to Plaintiff's Motion to Set Aside Judgment [DE #21-6] at ¶ 2. Greystone is
 22 presumably not in the business of making loans to businesses like Fantasy Holdings,
 23 which has nothing to do with providing housing. This is clearly in violation of Internal
 24 Revenue Guidelines for a tax-exempt organization, specifically *IRS Publication 4221-*
 25 *PF*, pp. 5 – 6. Furthermore, based on a review of Plaintiff's publicly available tax returns
 26 for 2009 and 2015 (Form 990 used for non-profits), the only asset it claims it owns is the
 27 Note. Nothing else. As such, it appears that Greystone may have been set up or is
 primarily used to hold this Note to provide the tax savings Mr. Casady attempted to
 achieve. Unclean hands on the part of Plaintiff and Mr. and Mrs. Casady in connection
 with the Note will be an affirmative defense asserted by Defendants in this case. *See*
2009 and 2015 Form 990 tax returns (excerpts) attached hereto as Exhibit "4".

1 routinely made by the Arizona defendants were made by way of wire-transfer
2 to the La Jolla branch of Union Bank in California; . . .

3 The terms of the Note show that Fantasy Holdings would make monthly payments to Mr.
4 Casady for five (5) years, with a balloon payment due to Plaintiff at the end of such term.
5 *See Note*. As the Court correctly pointed out in its Original Dismissal Order, sending
6 monthly payments by themselves to a resident in a forum state is “not the deliberate
7 creation of a ‘substantial connection’ with California.” *Sher v. Johnson*, 911 F.2d 1357,
8 1362 (9th Cir. 1990); *see also Scullin Steel Co. v. National Ry. Utilization Corp.*, 676 F.2d
9 309, 314 (8th Cir. 1982) (“[t]he use of interstate facilities (telephone, the mail), *the making*
10 *of payments in the forum state*, and the provision for delivery within the forum state are
11 secondary or ancillary factors and cannot alone provide the “minimum contacts” required
12 by due process”); *Atwal v. Myer*, 841 F. Supp. 2d 364, 367 (D.D.C. 2012) (District of
13 Columbia court lacked personal jurisdiction over nonresident borrower in lender’s action
14 to recover money due under promissory note, even if borrower had made payments to
15 lender while lender resided in District of Columbia; borrower had never been domiciled
16 in District of Columbia, borrower’s principal place of business had not been in District of
17 Columbia, and lender had not loaned money to borrower within District of Columbia).

18 2. Terms of the Contract.

19 Furthermore, nothing in the Note mandates which forum a lawsuit should be
20 brought in or which state law applies. No individual ever told Defendants verbally or in
21 writing that any dispute would be subject to California law or a lawsuit in a California
22 court. *Santadsin Declaration* at ¶¶ 15 – 16; *Coleman Declaration* at ¶¶ 14 – 15.
23 Santadsin executed the Note in Arizona. *Santadsin Declaration* at ¶ 12 *Coleman*
24 *Declaration* at ¶ 10; *See McGlinchy*, 845 F.2d at 816 (finding that no jurisdiction over the
25 defendant, even though the contract was signed in the forum state, but was negotiated
26 somewhere else and executed via mail).
27

1 3. Contemplated future consequences.

2 Paragraph 9 of the Amended Complaint then alleges that Defendants knew or
3 should have known that their breach of the Note would cause future harm to Plaintiff:

4 (vi) in conducting their activities, including borrowing money from a
5 California nonprofit corporation, Arizona defendants were fully aware that
6 their failure to pay the monies due under the Note would result in serious harm
and damage, suffered in California by a California resident

7 It appears that Plaintiff is attempting to improperly apply the “Calder effects test”
8 set forth in *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), which
9 is primarily reserved for determining specific personal jurisdiction in connection with a
10 tort claim. “[T]he ‘effects’ test requires that the defendant allegedly have (1) **committed**
11 **an intentional act**, (2) expressly aimed at the forum state, (3) causing harm that the
12 defendant knows is likely to be suffered in the forum state.” *Dole Food Co., Inc. v. Watts*,
13 303 F.3d 1104, 1111 (9th Cir. 2002). In this case, Plaintiff does not allege any tort claims.
14 The only causes of action set forth in the Amended Complaint relate to Defendants’
15 alleged breach of contract.

16 Regardless, “[t]o invoke *Calder*, a plaintiff must show the defendant’s acts were
17 “performed for the very purpose of having their consequences felt in the forum state.”
18 *Viracon, Inc. v. J & L Curtain Wall LLC*, 929 F. Supp. 2d 878, 886 (D. Minn. 2013)
19 (citing *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1390–91 (8th Cir.
20 1991)). In other words, the forum state must be the target of the defendant’s alleged
21 conduct, which requires something more than the defendant’s knowledge that a company
22 or resident in the forum state will suffer consequences from the alleged conduct, such as
23 a failure to pay. *Id.*; See, e.g., *Viasystems, Inc. v. EBM–Papst St. Georgen GmbH & Co.*,
24 646 F.3d 589, 594–95 (8th Cir. 2011) (failure to pay a plaintiff in the forum state “was not
25 uniquely or expressly aimed at the forum state or performed for the very purpose of
26 having [its] consequences felt in the forum state”) (citations omitted).

1 In its Original Dismissal Order, the Court also cites *Roth v. Garcia Marquez*, 942
 2 F.2d 617, 622 (9th Cir. 1991) as additional support that the future consequences of the
 3 contract should also be considered, including where most of the work was to be performed
 4 by a party. In this case, the only connection with California and the Plaintiff is that the
 5 final payment was to be made to Plaintiff at the end of the Note's term. *See Note*. As
 6 this Court correctly pointed out in its Original Dismissal Order, "Defendants did not
 7 contemplate substantial future dealings in California by obliging themselves to make a
 8 single payment to Greystone five years after the note was signed." *See Original*
 9 *Dismissal Order* at p. 10 [DE #15].

10 None of the causes of action set forth in Plaintiff's Complaint arose from any
 11 activity Defendants conducted in California. Simply put, Defendants neither purposely
 12 availed themselves of California law nor engaged in activities in California that provide
 13 any California court to have specific jurisdiction. As such, neither this Court nor any
 14 other court in California has personal jurisdiction over Defendants.

15 **C. Even if the Court finds that this Court has personal jurisdiction over**
 16 **Defendants, the exercise of personal jurisdiction is not reasonable.**

17 Even assuming *arguendo* that Plaintiff has established personal jurisdiction, such
 18 jurisdiction must still be reasonable. To establish reasonableness, the Court must look to:

19 (1) the extent of the defendant's purposeful interjection into the forum state,
 20 (2) the burden on the defendant in defending in the forum, (3) the extent of
 21 the conflict with the sovereignty of the defendant's state, (4) the forum state's
 22 interest in adjudicating the dispute, (5) the most efficient judicial resolution
 23 of the controversy, (6) the importance of the forum to the plaintiff's interest
 in convenient and effective relief, and (7) the existence of an alternative
 forum.

24 *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000) (citing
 25 *Burger King Corp.*, 471 U.S. at 476 – 477, 105 S.Ct. 2174). A court needs to balance all
 26 seven factors, as none are dispositive by itself. *Core-Vent Corp. v. Nobel Indus. AB*, 11
 27 F.3d 1482, 1488 (9th Cir. 1993).

1 In analyzing the above-referenced elements in this case:

2 ELEMENT 1: As argued *supra*, Defendants' contacts with California are tenuous
3 at best to constitute purposeful interjection into California.

4 ELEMENT 2: Expensive travel and legal costs, including paying for witnesses to
5 travel to California to testify, would be extremely burdensome to Defendants to litigate
6 this case in any state other than Arizona. *Santadsin Declaration* at ¶¶ 18 – 19.

7 ELEMENT 4: There does not appear to be anything unique about adjudicating this
8 case in California instead of Arizona. Upon information and belief, the law in both states
9 is substantially the same involving an alleged breach of promissory note. There is no
10 substantial interest to adjudicate Plaintiff's alleged causes of action in California as
11 opposed to Arizona.

12 ELEMENT 5: This is the most significant element in this case. It would be more
13 efficient to adjudicate this case in Arizona for all parties, as (a) the main two witnesses to
14 this case, Taylor Coleman and Santadsin, both reside in Arizona; and (b) Plaintiff's
15 potential relief will require it to domesticate any judgment it may obtain pursuant to 28
16 U.S.C. § 1965 because all of Defendants' assets are in Arizona. *Santadsin Declaration*
17 at ¶¶ 2, 19 – 20. Furthermore, as argued below, at the very minimum this Court is the
18 improper venue for Santadsin because Santadsin is an individual domiciled in Arizona.
19 *Id.* at ¶ 2. This is true, even if the Court finds that it has personal jurisdiction and venue
20 over Fantasy Holdings. ***At the very minimum, the Court would have to dismiss***
21 ***Santadsin from this action for improper venue, causing two separate lawsuits to be filed***
22 ***in Arizona and California.*** If Plaintiff files a similar lawsuit against Santadsin in
23 Arizona, defending two (2) separate lawsuits would be extremely burdensome and
24 unnecessary for Defendants.

25 ELEMENT 6: Effective relief is not exclusive to adjudicating this matter in
26 Arizona. The same exact relief Plaintiff is seeking in this case can be achieved if the case
27 is litigated in Arizona.

1 ELEMENT 7: California is not the only forum to file this case. Arizona clearly is
 2 another alternative forum with personal jurisdiction and proper venue over all parties to
 3 this action.

4 **D. Assuming that this Court finds there is personal jurisdiction over Defendants,**
 5 **this case should be dismissed under Fed. R. Civ. P. 12(b)(3) for improper**
 6 **venue.**

7 Pursuant to *Fed. R. Civ. P. 12(b)(3)*, a court may dismiss a case if it finds that it is
 8 the improper venue, or as an alternative remedy, it may transfer the case to the correct
 9 venue pursuant to 28 U.S.C. § 1406. In determining if the plaintiff's preferred venue is
 10 improper, the court looks to 28 U.S.C. § 1391(b):

11 A civil action may be brought in—

12 (1) a judicial district in which any defendant resides, *if all defendants are*
residents of the State in which the district is located;

13 (2) a judicial district in which a substantial part of the events or omissions
 14 giving rise to the claim occurred, or a substantial part of property that is the
 15 subject of the action is situated; or

16 (3) if there is no district in which an action may otherwise be brought as
 17 provided in this section, any judicial district in which any defendant is subject
 to the court's personal jurisdiction with respect to such action.

18 28 U.S.C. § 1391(b) (emphasis added). “The overriding purpose of § 1391(a) is to further
 19 the convenience of the parties.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d
 20 834 (9th Cir.1986) (citing *Gardner Engineering Corp. v. Page Engineering Co.*, 484 F.2d
 21 27, 33 (8th Cir. 1973)). “When the cause of action is personal to the individual defendant,
 22 the venue requirement must be met as to that defendant.” *Cummings v. Western Trial*
 23 *Lawyers Ass’n*, 133 F. Supp. 2d 1144, 1149 (D. Ariz. 2001) (quoting *Hoover Group, Inc.*
 24 *v. Custom Metalcraft, Inc.*, 84 F.3d 1408, 1410 (Fed. Cir. 1996)). ***Based on the plain***
 25 ***language of 28 U.S.C. § 1391(b)(1), when all defendants do not reside in the forum***
 26 ***state for purposes of the venue statute, venue is not proper in that state. Id. at n.2.***
 27

1. Venue in California is improper under 28 U.S.C. § 1391(b)(1) because, at the very minimum, Santadsin does not reside in California.

For purposes of establishing proper venue under 28 U.S.C. § 1391(b)(1) with respect to individuals, “a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled.” 28 U.S.C. § 1391(c)(1). In this case, there is no question that Santadsin is an individual who resides in Arizona, not California. *Amended Complaint* at ¶ 3; *Santadsin Declaration* at ¶ 2.

For purposes of establishing proper venue under 28 U.S.C. § 1391(b)(1) with respect to an entity (i.e., Fantasy Holdings), “an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question” 28 U.S.C. § 1391(c)(2). In other words, Fantasy Holdings will be deemed to reside in California under 28 U.S.C. § 1391(b)(1) only if this Court has personal jurisdiction over Fantasy Holdings.

Plaintiff argues *supra* that this Court has no personal jurisdiction over Fantasy Holdings. However, assuming *arguendo* that the Court finds that it does have personal jurisdiction over Fantasy Holdings for venue to be proper for Fantasy Holdings under 28 U.S.C. § 1391(b)(1) (by virtue of 28 U.S.C. § 1391(c)(2)), venue in California is still improper for Santadsin, as the application of 28 U.S.C. § 1391(c)(2) for personal jurisdiction is limited to entities. ***Proper venue for individuals under 28 U.S.C. § 1391(b)(1) is established by meeting the requirements of 28 U.S.C. § 1391(c)(1), which solely focuses on an individual’s domicile.*** Santadsin only resides in Arizona. *Santadsin Declaration* at ¶ 2. At the very minimum, the Court would be required to separate this action and still dismiss Santadsin from this suit pursuant to 28 U.S.C. § 1391(c)(1)

1 because his domicile is in Arizona, even if this Court concludes that venue is proper for
2 Fantasy Holdings because the Court has personal jurisdiction over Fantasy Holdings.

3 2. Venue is also not proper under 28 U.S.C. § 1391(b)(2) because no substantial
4 part of the events or omissions occurred in California.

5 Under 28 U.S.C. § 1391(b)(2), “venue is proper in a judicial district if ‘a substantial
6 part of the events or omissions giving rise to the claim occurred’ in that district.” *Myers*
7 *v. Bennett Law Offices*, 238 F.3d 1068, 1075 (9th Cir. 2001) (quoting 28 U.S.C. §
8 1391(b)(2)). As argued *supra*, the Note was signed and negotiated in Arizona and
9 through telephone conferences and electronic mail with Mr. Casady. *Santadsin*
10 *Declaration* at ¶¶ 10 – 12; *Coleman Declaration* at ¶¶ 8 – 10. Plaintiff was never part of
11 such negotiations. *Id.* Additionally, the place of intended performance for this Note was
12 Arizona rather than California because Arizona was the location of the business utilizing
13 all funds provided under the Note, and the money to repay the Note would come from
14 funds generated in Arizona. *Santadsin Declaration* at ¶ 13; *Coleman Declaration* at ¶
15 12. Furthermore, as stated in this Court’s Original Dismissal Order, “Defendants did not
16 contemplate substantial future dealings in California by obliging themselves to make a
17 single payment to Greystone five years after the note was signed.” *See Original*
18 *Dismissal Order* at p. 10 [DE #15]. There is simply no nexus showing that substantial
19 events or omissions occurred anywhere but Arizona with respect to any of the claims set
20 forth in the Complaint.

21 3. Venue is also not proper in California under 28 U.S.C. § 1391(b)(3) because
22 Arizona is another jurisdiction that this case can easily be brought.

23 There is no question that Arizona is the proper venue for this case. Both
24 Defendants reside in Arizona. Venue is not exclusive in this Court and not proper under
25 28 U.S.C. § 1391(b)(3) because the District Court in Arizona is clearly the only
26
27

1 alternative and correct venue, with personal jurisdiction over both Defendants. This suit
2 should have been brought in Arizona in the first place.

3 Accordingly, this case should also be dismissed for improper venue. As an
4 alternate remedy, this Court may transfer the case to the District of Arizona pursuant to
5 28 U.S.C. § 1406.

6 **E. Even if venue and personal jurisdiction are proper, this case should be**
7 **transferred to the District of Arizona pursuant to 28 U.S.C. § 1404(a) under**
8 **principles of *forum non-conveniens*.**

9 Even assuming *arguendo* that this Court finds proper venue and personal
10 jurisdiction over one or both Defendants, this Court should transfer this case to the
11 District of Arizona pursuant to 28 U.S.C. § 1404(a), which permits this Court to transfer
12 cases to any district in which the action could have been brought for the convenience of
13 the parties and in the interest of justice. “The purpose of section 1404(a) is to ‘prevent
14 the waste of time, energy, and money to protect litigants, witnesses and the public against
15 unnecessary inconvenience and expense.’” *Hawkins v. Gerber Product Co.*, 924 F. Supp.
16 2d 1208, 1212 (S.D. Cal. 2013) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84
17 S.Ct. 805, 11 L.Ed.2d 945 (1964)). To support a motion for transfer of venue pursuant
18 to 28 U.S.C. § 1404(a), the moving party must show “that venue is proper in the transferor
19 district; that the transferee district is one where the action might have originally been
20 brought; and that transfer will serve the convenience of the parties and witnesses and will
21 promote the interests of justice.” *Hawkins*, 924 F. Supp. 2d at 1212 (citing *Vu v. Ortho–*
22 *McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1155–56 (N.D. Cal. 2009), which quotes
23 *Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp.*, 820 F. Supp. 503, 506 (C.D.
24 Cal. 1992)).

25 In this case, if this Court finds that venue is only proper for one Defendant but not
26 the other as argued *supra*, then transfer to Arizona under 28 U.S.C. § 1404(a) would
27 allow one case against both Defendants to proceed in one venue, as opposed to two

1 separate cases in two separate courts against two separate defendants. “To permit a
2 situation in which two cases involving precisely the same issues are simultaneously
3 pending in different District Courts leads to [a] wastefulness of time, energy and money
4 ... Moreover, such a situation is conducive to a race of diligence among litigants for a
5 trial in the District Court each prefers.” *Cont’l Grain Co. v. The FBL*-585, 364 U.S. 19,
6 26 (1960). *See also* 15 *Charles Alan Wright, Arthur R. Miller & Edward H. Cooper,*
7 *Federal Practice & Procedure* § 3854 (4th ed. 2016) (noting that transfer is warranted
8 under § 1404(a)'s broad “interest of justice” reference when the transfer would prevent
9 “multiplicity of litigation as a result of a single transaction or event.”).

10 As argued *supra* and supported by the statements set forth in the Santadsin and
11 Coleman Declarations, additional reasons supporting transfer of this case to Arizona
12 include that: (a) the District of Arizona has personal jurisdiction over both Defendants
13 and is the proper venue because both Defendants reside in Arizona and a substantial part
14 of the events or omissions giving rise to Plaintiff’s claim occurred in Arizona pursuant to
15 28 U.S.C. § 1391(b)(2); (b) Defendants’ witnesses are also residents in Phoenix, Arizona,
16 and such witnesses could not be subpoenaed pursuant to *Fed. R. Civ. P. 45(c)(1)(A)*
17 because they live further than 100 miles from the Southern District of California; (c) all
18 of the events and omissions at issue occurred in Arizona; (d) all of the evidence is located
19 in or around Phoenix, Arizona; (e) Defendants cannot afford counsel in California or the
20 travel costs to attend hearings and a trial in California; (f) even assuming Plaintiff
21 obtained a judgment in this Court, Plaintiff would still have to domesticate such judgment
22 in the State of Arizona pursuant to 28 U.S.C. § 1965; and (g) assuming a judgment is
23 entered against any Defendant, all assets that Plaintiff may attach are only located in
24 Arizona.

F. Pursuant to *Fed. R. Civ. P. 12(b)(5)*, this case should be dismissed because Santadsin was never served by a process server.

Finally, this case should be dismissed because Santadsin was never properly served in accordance with the Federal Rules of Civil Procedure. An individual may be served: (a) in accordance with the law of the state where the court is located or where service is made; (b) by delivering a copy of the summons and complaint to the individual personally; (c) by leaving a copy of the summons and complaint at the individual's dwelling or usual place of abode; or (d) by delivering a copy of the summons and complaint "to an agent authorized by appointment or by law to receive service of process." *Fed. R. Civ. P. 4(e)*. Under the California Code of Civil Procedure, service on an individual outside California may be served personally or via certified mail with a return receipt. *CCP § 415.40*. Under the Arizona Rules of Civil Procedure, an in-state individual must be served in the same manner set forth in (b) through (d) above. *Ariz. R. Civ. P. 4.1(d)*. The complaint and summons must be served within 90 days after the complaint is filed. *Fed. R. Civ. P. 4(m)*. "The filing of an amended complaint does not restart the 90-day period 'except as to those defendants newly added in the amended complaint.'" *Carr v. International Game Technology*, 770 F. Supp. 2d 1080, 1100 (D. Nev. 2011) (quoting *Bolden v. City of Topeka*, 441 F.3d 1129, 1148 (10th Cir. 2006)).

In this case, no affidavit whatsoever has been filed by any process server showing service on either Defendant. According to the original summons attached hereto as Exhibit "5", it was addressed to Fantasy Holdings' statutory agent Perkins Coie Brown & Bain P.A., not Santadsin's dwelling or place of abode. Page 3 of Exhibit "5" also includes a print-out of Fantasy Holdings' Arizona Corporation Commission report confirming that the address listed on Santadsin's summons is merely the same address as the statutory agent for Fantasy Holdings. Santadsin never was served either the complaint or summons individually at any time. *Santadsin Declaration* at ¶ 17. Accordingly, this case should be dismissed with respect to Santadsin for insufficient service of process.

III. CONCLUSION

Despite the additional allegations set forth in the Amended Complaint, Plaintiff has still not established a prima facie case for personal jurisdiction. There is neither general nor specific jurisdiction in this Court for either Defendant. Furthermore, there is no question that at the very minimum, this Court is not the proper venue for individual Santadsin. As such, even if the Court finds that there is personal jurisdiction for Defendants and that venue is proper for Fantasy Holdings, the case should be dismissed or transferred to Arizona due to this Court being the improper venue for individual Santadsin. Finally, because Santadsin was not properly served the original complaint within 90-days after the complaint was issued, the case should be dismissed for insufficient of service of process.

WHEREFORE, Defendants respectfully request that this Court enter an order:

- A. Dismissing Plaintiff's complaint without further leave to amend pursuant to *Fed. R. Civ. P. 12(b)(2)* for lack of personal jurisdiction;
- B. Dismissing Plaintiff's complaint without further leave to amend pursuant to *Fed. R. Civ. P. 12(b)(3)* for improper venue;
- C. Dismissing Plaintiff's complaint without further leave to amend pursuant to *Fed. R. Civ. P. 12(b)(5)* for insufficient service of process;
- D. In the alternative, transferring this proceeding to the United States District Court for the District of Arizona under 28 U.S.C. § 1406(a) (cure of defective venue) or 28 U.S.C. § 1404(a) (forum non-conveniens);
- E. Awarding Defendants' attorneys' fees and costs incurred in connection with this Motion; and
- F. For such other and further relief as the Court deems just and proper.

1 **RESPECTFULLY SUBMITTED** this 20th day of December, 2016.

2 **LAW OFFICE OF SCOTT W. HYDER, PLC**

3
4
5 By: /s/ Scott W. Hyder, AZ Bar No. 017282

6 Scott W. Hyder

7 Attorney for Defendants Fantasy Holdings

8 LLC and Narongyos Santadsin

9 E-mail: shyder@scotthyderlaw.com

10 I hereby certify that the foregoing was filed with the Clerk of the Court this 20th day of
11 December 2016 via ECF

12 /s/ Scott W. Hyder

13 List of Exhibits

14 Exhibit "1" - Declaration of Apollo Santadsin

15 Exhibit "2" - Declaration of Taylor Coleman

16 Exhibit "3" - Fantasy Holdings Term Sheet

17 Exhibit "4" - Plaintiff's 2009 and 2015 Tax Returns

18 Exhibit "5" - Summons and Proof of Statutory Agent Address for Fantasy Holdings